
(2016) 11 MP CK 0023
In the Madhya Pradesh High Court
Case No : W.P. No. 7229 of 2016

Nishank Tiwari

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 08-11-2016

Acts Referred:

Medical Council (Criteria for Identification of Students Admitted in Excess of Admission Capacity of Medical Colleges) Regulations, 1997 — Regulation 9

Citation : (2017) 1 MPLJ 617

Hon'ble Judges : Shri P.K. Jaiswal and Virender Singh, JJ.

Bench : Division Bench

Advocate : Shri Akash Sharma, Advocate, for the Petitioners In W.P. Nos. 7229 and 7253 of 2016; Shri Aditya Sanghi, Advocate and Shri A.S. Parihar, Advocate, for the Petitioners In W.P. Nos. 7233, 7251 and 7252 of 2016; Shri P. Bhargava, Dy. A.G, for the Respondents

Final Decision : Allowed

Judgement

1. These writ petitions arise out of different orders of the respondent No.2 Director, Department of Medical Education, Madhya Pradesh dated 21.10.2016, but the issue arising out of all the cases is common whereby, the admissions for the MBBS course through off-line counselling on 7.10.2016 for unreserved (UR) and Other Back ward Class (OBC) in private medical colleges namely Amaltas Institute of Medical Science, Dewas and R.D. Gardi Medical College, Ujjain, had been cancelled. The reason for cancellation has been given by the Director, Medical Education is that due to "human error", the admissions were granted in those private medical colleges over and above the sanctioned intake of seats designated for the academic session 2016-17.

2. Present batch of writ petitions have been filed by the 24 writ petitioners. Their details are as under :-

Sr.No.

W.P. Nos.

Name of the students

Marks obtained out of 720.

Name of the college

Category

Date of grant of admission

1

7229/16

I) Nishank Tiwari

376

Amaltus Institute of Medical Science, Dewas.

UR

07/10/16

ii) Animesh Singhai

369

2

7253/16

i) Puja Kumari

372

Amaltus Institute of Medical Science, Dewas.

UR

do

ii) Aakanksha Singh

377

3

7233/16

i) Shirish Verma

297

Amaltus Institute of Medical Science, Dewas.

OBC

-do-

ii) Mehul Patidar

286

OBC

iii) Ayush Nema

293

OBC

iv) Salman Khan

295

OBC

v) Anurag Rathore

284

-do-

OBC

vi) Sandeep Bhayal

284

OBC

vii) Sandeep Mukati

282

-do-

OBC

viii) Parmanand Parmar

304

OBC

ix) Asif Khan

304

OBC

x) Virendra Patidar

293

do

OBC

xi) Salamat Shah

295

OBC

xii) Abeda Khan

377

do

OBC

xiii) Sohail Ali

365

UR

xiv) Saloni Neema

365

do

UR

xv) Priya Patidar

276

OBC

xvi) Megha Patidar

303

do

OBC

do

4

7251/16

i) Mohit Khamora

386

Amaltus Institute of Medical Science, Dewas.

UR OBC

do

ii)Chandramukhi Patel

280

5

7252/16

i) Yogesh Yadav

405

R.D. Gardi College,Ujjain.

OBC

do

3. The petitioners before this court are the students who are domicile candidates of the State of Madhya Pradesh, satisfying the conditions prescribed by the State for that purpose. They have appeared in the NEET Examination for the academic year 2016-17 conducted by the Central Board of Secondary Education through All India Pre - Medical / Pre Dental Entrance Test for the admission in the MBBS and BDS course for the academic year 2016-17. The petitioners were declared successful in the said examination having scored 376 (UR), 369 (UR), 377 (UR), 365 (UR), 365 (UR), 304 (OBC), 303 (OBC), 292 (OBC), 295 (OBC), 295 (OBC), 293 (OBC), 293 (OBC), 286 (OBC), 284 (OBC), 284 (OBC), 282 (OBC), 276 (OBC), 386 (UR), 280 (OBC), 405 (OBC), 362 (UR) and 377 (UR) Marks, respectively as per the result of the NEET Examination dated 16.8.2016.

4. That, after the declaration of the results, the petitioners herein registered for the on-line counselling organized by the State of M.P. under the "Madhya Pradesh Sahayata Na Panewale Niji Chikitsa Mahavidhyalaya Ev Dant Chikitsa Mahavidhyalaya Mein MBBS Tatha BDS Pathyakram Mein Pravesh Ki Patrata Pravesh Ki Riti Ev Sthano Ke Arakshan (Anivasi Bhartiya Ke Liye Sthano Ka Arakshan Samilit Hai) Ke Liye Viniyaman, 2016" , (herein after referred to as "Regulation of 2016").

5. On 2.5.2016, Hon"ble the Supreme Court uphold the Constitutional validity of "Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007 "" (hereinafter referred to as the "AFRC Act of 2007"). The State government in compliance of directions of Hon"ble the Supreme Court and in terms of the statutory mandate under Section 3 (d) read with Section 6, 7 and other provisions of AFRC Act of 2007 framed the Regulation of 2016, which provides that Centralised State level combined counselling to be conducted by the State Government for admission in MBBS / BDS course in Government and private medical and dental colleges of the State.

6. Accordingly, the State Government issued time schedule for holding state level combined counselling for admission in MBBS / BDS course in Government and private medical and dental colleges of the State.

7. As per time schedule, scrutiny and admission process for the first round of on-line counselling were scheduled from 26.8.2016 to 8.9.2016, but the process of counselling could not be completed till 8.9.2016, therefore, the counselling schedule was extended till 10.9.2016.

8. The Constitutional validity of Regulation No.6 of Regulation of 2016 was challenged on 31.8.2016 by filing W.P.No.5942/2016. The said writ petition was dismissed by Indore Bench of M.P. High Court holding that the regulation is not ultra-vires and all the students from entire country who had participated in the NEET Examination were entitled to participate in the counselling and seats were to be allotted as per their merit. Thereafter another writ petition was filed bearing W.P.No.14496/2016 at principal seat, Jabalpur, challenging the validity of Regulation No.6 of the Regulation 2016. The Division Bench on 26.9.2016, declared the Regulation No.6 as ultra-vires as far as it excludes the applicability of the requirement of domicile / permanent resident in respect of the General category candidates seeking admission to MBBS and BDS course in private medical and dental colleges, as it violates the equality clause under Article 14 of the Constitution and amounts to denial of equality of opportunity.

9. In Contempt Case No.640/2016, the Indore Bench by order dated 28.9.2016 passed a detailed order holding the respondents No.1 and 2 therein having committed contempt of court and directed to appear in person on 29.9.2016. The learned court also directed to comply the order passed in W.P.No.5942/2016 dated 31.8.2016.

10. One Omprakash Shekhawat, challenged the order dated 26.9.2016 by filing Special Leave to Appeal (c) No.2920/2016 before the Apex Court passed in W.P.No.14496/2016 by the principal seat at Jabalpur. During pendency of the said Special Leave Petition, the full Bench of principal seat at Jabalpur by order dated 29.9.2016 stayed the operation of order dated 28.9.2016.

11. The private medical and dental colleges in violation and disobedience of the order dated 2.5.2016 passed by the Apex court in Civil Appeal No.4060/2009, informed the State Government that the counselling by the State Government is not in accordance with law and that each private medical college would conduct its own counselling. The contempt petition was filed by the vide Contempt Petition (s) No.584/2016 in Civil Appeal No.4060/2009 against the private medical and dental colleges of the State who were conducting the counselling for admissions in their colleges. The Hon"ble Supreme Court by order dated 22.9.2016 directed that admission to all medical seats shall be conducted by Centralised counselling only by the State Government and none-else. It was also directed that if any counselling has been done by any college or University and any admission to any medical seat has been given so far, such admission shall stand cancelled forthwith and admission shall be given only as per Centralised counselling by the State Government. The State Government was directed to undertake the entire process of counselling in private medical and dental colleges a fresh and that the process to be completed by 30.9.2016.

12. The on-line counselling for allotment of the college in Government as well as private medical colleges for the MBBS course was conducted on 29.9.2016 and results thereof were not published until 2.10.2016. A large number of candidates in the MBBS course in private colleges did not ultimately joined and as a consequence there were a number of vacant seats remained in. As per chart (Annexure R/4), total 91 seats of MBBS and BDS course were lying vacant in Government medical college and in private medical and dental college 342 seats were vacant in MBBS course and 426 were vacant in BDS course in various colleges. The same vacant seats were existing on 5.10.2016. As a large number of seats were remaining vacant an application was moved by the Government of M.P. in W.P. (Civil) No.76/2015 (Ashish Ranjan and Ors. v. Union of India and Ors.) before the Apex Court. On 3.10.2016, Hon"ble the Supreme Court was pleased to extend the time for counselling till 7.10.2016 and was directed that vacant seats shall be filled without insisting on domicile. The Apex Court also directed the State Government to file an affidavit of the competent authority indicating the names of the students, who will be taking admission from 3.10.2016 in respect of Government colleges as well as the private colleges indicating there clarifications. Order dated 3.10.2016 reads as under :-

"It is submitted by Mr. P.S. Patwalia, learned Addl. Solicitor General appearing for the State of M.P. that 91 seats (MBBS-87, BDS-4) in the government colleges are lying vacant.

Having heard Mr. Patwalia, learned Addl. Solicitor General for the State of M.P., Ms. Pinky Anand, learned Addl. Solicitor General for Union of India, Mr. Gaurav Sharma, learned counsel for the Medical Council of India and Mr. Vivek Tankha, learned senior counsel along with Mr. A.P. Shrotri, learned counsel for the A.P.D.M.C, it is directed that the 91 seats which are within the government quota shall be filled up by the State of M.P. As far as the other seats are concerned which are lying vacant in private colleges, they shall be filled up by the State in terms of the order passed by the Constitution Bench without insisting on domicile. It is hereby made clear that the students who have already taken admission, their admissions shall not be disturbed.

The State of M.P. Shall file an affidavit of the competent authority indicating the names of the students, who will be taking admission from today in respect of government colleges as well as the private colleges indicating their qualifications. This exercise shall be completed on or before 7.10.2016. If any admission is given after that date, it shall be deemed to be an invalid admission. The seats which are falling in the BDS stream shall also be filled up by following the same criteria.

The interlocutory applications relating to the State of M.P. stand disposed of.

Ms. Pinky Anand, learned Addl. Solicitor General appearing for the Union of India has filed a chart which is not complete. She will file a complete chart by 5.10.2016.

The other interlocutory applications as well as the other matters relating to the other States shall be listed on 6.10.2016. It is hereby directed that the seats which are reverted to the State quota and remain unfilled, shall not be filled up till then."

13. On 5.10.2016 in SLP (c) No.2920/2016, filed before Hon'ble the Supreme Court against the order dated 26.9.2016 passed in W.P.No.14496/2016, clarified that those students who had participated in the counselling on 30.9.2016 should not be deprived of admission and shall be offered admission on the basis of criteria as applicable on that day.

14. In compliance to the order passed by the Apex Court, the State Government offered admissions in private medical and dental colleges to the students who were called for the counselling on 30.9.2016 and whose allotment list could be released by M.P. on-line only on 2.10.2016 and on the basis of criteria prevalent on that day in the sequence of inter-se merit in online counselling. The on-line counselling process was resumed through M.P. online on 6.10.2016 at 8.00 AM was scheduled to be completed on 7.10.2016 at 5 PM and after which the M.P. online admission portal was closed. The Government of M.P. after the completion of online counselling looking at large number of vacant seats in Government and private medical and dental colleges, decided to fill left over seats, through offline counselling as per the provisions of the clause 12 of Regulation of 2016 and notified for the purpose of admission in Government and private medical and dental colleges of Madhya Pradesh. Prior to offline counselling the category wise status in Government and Private Medical / Dental colleges were generated manually by compilation of available computer data. To fill these vacant seats, the allotment in offline counselling was carried out after obtaining vacancy status of seats in Government and Private Medical / Dental Colleges. As per Annexure R/16, total 468 seats were vacant in Private Medical Colleges as on 7.10.2016 at 7.00 for MBBS course. For BDS seats one seat in Government Medical Dental College at Indore and 692 seats in 13 Private Dental Colleges.

15. The petitioners herein were called for off-line counselling on 7.10.2016 and they were placed higher in merit list and granted admission in MBBS course at Amaltas Institute of Medical Science, Dewas and R.D. Gardi Medical College, Ujjain and admission slips were also issued to them. The petitioners herein in pursuance of the said admission letter reported to the Amaltas Institute of Medical Science, Dewas and R.D. Gardi Medical College, Ujjain and submitted the necessary documents. They also paid the fees for admission in the MBBS course to the Department of Directorate of Medical Education (DME). The authorities of Mahatma Gandhi Medical College, Indore have given the instructions to the petitioners to approach to the Amaltas Institute of Medical Science, Dewas and R.D. Gardi Medical College, Ujjain and upon instructions, the petitioners marked their presence in the allotted colleges and after accepting the reporting of the petitioners the authorities of the colleges have asked to deposit extra fees in the college.

16. Some of the petitioners herein who were pursuing their studies in the course of B-Pharm, who had completed one year of studies in the said course withdrew from the respective course and took admission and submitted the transfer certificate to the respective medical colleges. After granting admission the State Government came to notice that excess admissions were done in three private medical colleges namely Amaltas Institute of Medical Science, Dewas, R.D. Gardi Medical College, Ujjain and People's Medical College Bhopal. This they came to know on the basis of news published in the news paper. The State Government found that total intake capacity of Amaltas Institute of Medical Science, Dewas was 127 whereas total 155 admissions were given. Similarly, in R.D. Gardi Medical College, Ujjain against the total intake capacity of 130 seats total 131 admissions were given. The State Government on the basis of aforesaid data cancelled the admissions of 37 excess students who were granted admission in three Private Medical Colleges namely Amaltas Institute of Medical Science, Dewas, R.D. Gardi Medical College, Ujjain and People's Medical College, Bhopal. The writ petitioners were granted admissions in Amaltas Institute of Medical Science, Dewas and R.D. Gardi Medical College, Ujjain and, therefore, they have challenged the same by filing these writ petitions on the ground that there was no "human error" in granting admissions to those Private Medical Colleges. This was manual compilation of computer data collected in excel spread sheets for generating vacancy status for offline counselling in the above said Private Medical Colleges on 7.10.2016.

17. Learned counsel for the petitioners has submitted that the admission of the petitioners has been cancelled for no fault of theirs despite being eligible, having been issued allotment letters by the State Government itself having submitted the relevant document and having paid the fees for the courses. The cancellation has also led to anomaly as candidates who were less meritorious and lower in order of merit as compared to the writ petitioners herein who had chosen to take admission in other colleges are continuing to take their admissions. Thus, while less meritorious students have been allowed to continue in the academic course, the admission of the petitioners have been cancelled without accommodating them against the other seats of MBBS course in the colleges which were available on 7.10.2016. The action of the State Government in cancelling the admissions of the petitioners herein is contrary to the dictum of the Apex Court in the case of *Asha v. Pandit B.D. Sharma University of Health Sciences and Ors.* 2012 (7) SCC 389, *Priya Gupta v. State of Chattisgarh and Ors.* 2012 (7) SCC 433, *Krina Ajay Shah and Ors. v. Secretary Association of Management of Unaided Pvt. Medical and Dental Colleges Maharashtra and Ors.* 2016 (1) SCC 666 and *Monika Raka and Ors. v. Medical Council of India and Ors.* 2010 (10) SCC 233. In the matter of *Krina Ajay Shah and Ors (supra)* Hon'ble the Supreme court directed the State of Maharashtra to pay an amount of Rs.20,00,000/- payment towards public law damages. Number of candidates were granted admission on 7.10.2016 who were less meritorious than the petitioners and, therefore, the State Government instead of cancelling the admissions of the petitioners could have

cancelled the admission to those students who were less meritorious to the present petitioners and accommodated the present petitioners in those seats. The Director of Medical Education, Bhopal, was not justified in cancelling the admission to the petitioners herein who were granted admission on the basis of merit and their admissions were cancelled without there being any fault.

18. In the case of Priya Gupta (*supra*), the Apex court held that adherence to the principle of merit, compliance with the prescribed schedule are mandatory requirements. The principle of merit cannot be so bluntly compromised. The criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be a travesty of the scheme formulated by Apex Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. The Apex Court in the case of *Asha v. Pandit D.D. Sharma University of Health Sciences and Ors.* (*supra*) has also observed that circumvention of merit is not only impermissible but is also abuse of the process of law. Learned counsel for the petitioners lastly submitted that petitioners are not at fault and the so called "human error" should not come on their way to deny admission to the meritorious students and prayed that writ petitions filed by the petitioners be allowed and order impugned be quashed.

19. Per contra, Shri P.M. Bhargava, Dy. A.G. for the respondents / State has drawn our attention to the various orders passed by Hon"ble the Supreme Court in W.P. (C) No.76/2015 and order dated 26.10.2016 (Annexure P/19) passed in Petition (s) for Special Leave to Appeal (c) No.2920/2016 and submitted that now the matter has been listed for 9.11.2016 before Hon"ble the Supreme Court and the present writ petition should be put in abeyance till the final out come of the Special Leave Appeal No.2920/2016. On merit he very categorically admitted that present writ petitioners were more meritorious and on 7.10.2016 number of students who were less meritorious to the petitioners were granted admission. It is also not in dispute that at the time of counselling petitioners were never pointed out that they were granted admission in Private Medical Colleges over and above of their sanctioned intake capacity. It is also not disputed that at the time of counselling the petitioners were entitled for admission in number of private medical colleges as per choice. The petitioners are not concerned about the fact that the Director, Medical Education, Madhya Pradesh had no knowledge that the admissions were granted over and above the sanctioned intake of seat designated for the academic session to the particular institutions. Their admissions were cancelled on 21.10.2016. It is also admitted that no show cause notice was issued nor any opportunity was granted to the petitioners before cancelling their admission and prayed for dismissal of the writ petitions.

20. We have gone through the detailed reply filed by the respondents supported with the affidavit of Director, Medical Education, Dean Medical College Indore where the counselling was conducted on 7.10.2016. It is also not in dispute that

at present number of seats are lying vacant, but in view of the order passed by Hon''ble the Supreme Court now after 7.10.2016, they cannot be granted any admission over the vacant seats, which are still lying vacant. Learned counsel for the petitioners also made a statement at bar that none of the petitioner's have filed any application for intervention in the writ petition and SLP is pending before the Apex Court nor the subject matter in the present writ petition are pending before Hon''ble the Supreme Court and prayed that the matter be decided on merit.

21. The petitioners in the present batch of writ petitions are only challenging the order of cancellation by which the admission granted to them on 7.10.2016 has been cancelled on 21.10.2016.

22. In the present case, we have no doubt in our mind that the fault is attributed to all the stake holders involved in the process of admission.

23. Explanation - 2 of Section 10-A (2) of the Indian Medical Council Act, 1956, the admission capacity means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training. Under Clause (f) (c) of Section 33 of the Indian Medical Council Act, 1956, the Central Government makes Regulations known as "The Medical Council of India (criteria for identification of students admitted in excess of admission capacity of medical colleges) Regulations, 1997". As per Regulation No.4, Council shall every year prior to start of the academic medical course intimate the medical colleges and State / Union Territory Government, the sanction intake capacity of the students for under graduate / post graduate courses in medical colleges. As per Regulation 5 all medical colleges conducting under graduate / post graduate course shall furnish year wise lists of students admitted during the academic sessions to the council. Regulation No.6 deals with furnishing of list by competent authority. As per Regulation 7 a list of students to be furnished to the Medical Council of India shall be prepared by a competent authority in order of merit on the basis of which admissions have been made. The list shall be supported by the affidavit of Dean / Principal of medical college, stating the sanctioned admission capacity for that medical college and that no admission shall be made in excess of the admission capacity.

24. All matters relating to excess admission of the students shall be decided by the Medical Council of India taking into account the list furnished to the Council by a competent authority and the admission capacity fixed for the medical college. After it is found by the council that excess admissions have been made, the students lower down in the list shall be treated to be admitted against the increase in admission capacity to the extent of excess admission. The students admitted through All India Entrance Examination shall be included within the fixed admission capacity. Rule 9 deals with the identification of excess admission and non-recognition of medical qualification. Any dispute in the matter of identification of excess admission of student(s) in a medical institution shall be referred to the Central Government for decision.

25. As per proceeding dated 6.10.2016, the admission process was started on the basis of list dated 2.10.2016. Relevant proceedings reads as under :-

"mDr cSBd esa ekuuh; loksZPp U;k;ky; ubZ fnYyh esa nk;j ,l0,y0ih0 dzeKad lh0 dzeKad 29209@2016 vkse flag "ks[kkor fo:) e0iz0 "kklu ,oa vU; ds ifjizs{; esa gq, fu.kZ; dh foospuk lSjHk feJk vf/koDrk ds }kjk izkIr bZ&esy fnukad 05-10-2016 ds vuqlkj ;g dh xbZ fd loksZPp U;k;ky; ds vkns"k esa tks vkoaVu lwph fnukad 21-01-2016 dks ,e0ih0 vkWuykbZu }kjk tkjh dh xbZ Fkh bls ekU; djrs gq, mlh ds vk/kkj ij e0iz0 "kkldh; ,oa futh fpfdRlk@nar fpfdRlk egkfo|ky;ksa esa miyC/k lhVksa ij izosV izfdz;k iw.kZ dh tkos] rFkk bl pj.k esa fjDr jgh lhVksa ds vkoaVu ,oa izos"k izfdz;k vkWQ ykbZu dkmUlsfyax }kjk ,e0ih0 vkWuykbZu jftLVMZ MkseSlkbZy ,oa ukWu MkseSlkbZy uhV ;wth 2016 dh dkWeu esfjV fyLV ls dh tk;sxhA"

26. On the same date, ie., 6.10.2016, the Director of Medical Education rectified number of errors as is evident from their proceedings. Para 1 of that proceeding is relevant which reads as under :-

"vH;FkhZ vfHk"ksd gfj;kuh] uhV 2016 ;w0th0 jksy ua0 83903392] ,p0lh0] ih0,p0 2 vH;FkhZ }kjk f"kdK;r dh xbZ ftlesa mlus vkosnu i= esa ys[k fd;k x;k fd mls f} rh; pj.k dh vkWuykbZu dkmUlsfyax esa xka/kh fpfdRlk egkfo|ky; Hkksiky esa ih0,p0 Js.kh ls vkoaFvR Fkh ftl ij og izosf"kr Fkk ,oa r`rh; pj.k ls iwoZ ,e0th0,e0 bUnkSj esa ,d ih0,p0 dh lhV miyC/k Fkh ijUrq ;g lhV mUgsa vkoaFvR ugha gqbZ vkSj u gh fdlh vU; dks ih0,p0 Js.kh ds vH;FkhZ dks lhV vkoaFvR gqbZA

blh vuqdze esa ;"kLoh cjQk vks0ch0lh0 uhV 2016 ;wth&jksy ua0 83903712 ih0,p0 }kjk Hkh blh rjg dh f"kdK;r laca/kh vkosnu i= fn;k x;kA mDr nksuksa izdj.kksa dh tkWap gsrq ,e0ih0 vkWuykbZu Hkksiky dks izsf"kr fd;k x;kA ,e0ih0 vkWuykbZu }kjk tkap ds mijkar dkmUlsfyax lfefr ds le{k fjiksVZ izLrqr dh xbZ fd vkoaVu izkslsflax ds nkSjku "ERROR" =qfV dh otg ls 26 vH;fFkZ;ksa dk vkoaVu izHkkfor gqvK gS lfefr }kjk fjiksVZ dk fujh{k.k djus ds mijkuR fu.kZ; fy;k x;k fd vkoaVu fu;eksa esa fy, x, izko/kku ds vuqlkj ,e0ih0 vkWuykbZu }kjk ugha fd;k x;k vr% lfefr }kjk fu.kZ; fy;k x;k fd =qfV lq/kkj dj ,e0ih0 vkWuykbZu }kjk la"kkf/kr vkoaVu tkjh fd;k tk,A ,e0ih0 vkWuykbZu }kjk =qfV lq/kkj dj vkoaVu dh lwph miyC/k djkbZ xbZ lwph layXu gSA ftlesa 26 vH;fFkZ;ksa ds iwoZ dh vkoaFvR laLFkkvksa esa ifjorZu gqvK gS bl ifjorZu ls rhu vH;FkhZ ftUgsa ewy vkoaVu ifj.kke esa vkoaVu gqvK Fkk mUgsa la"kkf/kr vkoaVu ifj.kke esa dksbZ vkoaVu ugha gqvK gSA bu lHkh vH;FkhZ;ksa dks uohu vkoaVu ds laca/k esa tkudkj ,e0ih0 vkWuykbZu rRdky ,l,el ds }kjk nh tkosxh] rFkk la"kkfkr vkoaVu lwph dks ,e0ih0 vkWuykbZu ,oa Mh0,e0bZ0 dh osclkbZV ij iznf"kZr fd;k tk;sxhA ,e0ih0 vkWuykbZu ds vf/kdkfj;ksa }kjk dkmUlsfyax lfefr dks vk"okflr fd;k x;k fd mijksDr =qfV ds vykok "ks"k vkoaVu dk ifj.kke lgh gSaA"

27. As per proceeding dated 7.10.2016 offline counselling was started in the evening at 6.00 PM. Prior to offline counselling the following decision has been taken by the committee which reads as under :-

"1- fjDr jgh lhVksa ij vkoaVu dh izfdz;k Js.khokj lacaf/kr Js.kh ds vH;fFkZ;ksa dh

esfjV ,oa ik=rkuqlkj dh tkosxhA

2- ;g izfdz;k laiUu gksus ds ckn fu;ekuqlkj duo"kZu jkmaM dh izfdz;k dh tk;sxhA

3- vH;fFkZ;ksa dks vkoafVr lhV ij izksOghtuy vkoaVu iznku fd;k tk;sxk rnqijkar izos"k ds le; vH;FkhZ dh igpku ,oa ewy nLrkostksa ds IR;kiu i"pkr~ gh mudk izos"k vafre ekuk tk;sxA vU;Fkk vkoaVu Lor% fujLr ekuk tk;sxA

4- bl izfdz;k dks lwpk: :i ls laiUu djus ds fy;s nks ysDpj fFk;sVj rS;kj djus ds laca/ k esa funsZ"k tkjh fd;s x;s gS ,d ysDpj fFk;sVj esa vuqlwfrp tutkfr] vuqlwfrp tkfr ,oa vU; fiNM+k oxZ Js.kh ds vH;fFkZ;ksa dh vkoaVu izfdz;k dh tkosxhA

5- Js.khokj laLFkkokj fjDr lhVksa dh tkudkj lka; 5-00 cts "kkldh; laLFkkvksa dh r`rh; ,oa futh laLFkkvksa dh f}rh; dkmUlsfyax ds vkWuykbZu dkmUlsfyax lekIr ij uksMy vf/kdkjh lacaf/kr "kkldh; egkfo|ky; }kjk lfefr dks rRdky miyC/k dj;k; tkuk lqfuf"pr fd;k tk;sA

6- mYysf[kr dk;Zokgh fooj.k esa fy;s x;s fu.kZ; ,oa funsZ"ksa ls vkoaVu ,oa LdzwfVuh desVh dks voxr dj;k; tk;sA"

28. After completing offline counselling, the committee had taken the following decision which reads as under :-

mDr cSBd esa fuEkuqlkj fu.kZ; fy;s x;s%&

1- fnukad 07-10-2016 dks lk;adky 5-00 ctsa vkWuykbZu vH;fFkZ;ksa dh izos"k izfdz;k lekIr gksus ds i"pkr~ "kkldh; Lo"kkli ,oa futh fpfdRlk@nar fpfdRlk egkfo|ky;ksa esa fjDr jgh lhVksa dh tkudkj laLFkkvks ls izkIr dh xbZ tks laLFkkvksa }kjk jkf= yxHkx 7-30 cts miyC/k djkbZ xbZA

2- vkWQykbZu dkmUlsfyax gsrq Js.khokj LdzqfVuh dh izfdz;k nksigj 1-00 cts ls izkjaHk dh xbZA

3- Lo"kkli fpfdRlk ,oa nar fpfdRlk egkfo|ky;ksa dh vkWuykbZu dkmUlsfyax ds nkSjku yxHkx 4-00 cts "kkldh; vfHkoDrk ekuuh; mPp U;k;ky; tcyiqj }kjk lwfrp fd;k x;k fd ekuuh; U;k;ky; tcyiqj ds MCY;w0ih0dzekad 17114@2016 esa rhu vH;kfFkZ;ksa dks ftuds uke dze"k% 1 Jh /kuUt; frokjh 2- Jh vkdk"e esgjk 3- Jh izfrd flag dks py jgh vkWuykbZu dkmUlsfyax esa tks lka;dky 5-00 ctsa lEiUu gksuh Fkh esa Hkkx ysus ds fy;s vuqefr nsus dk vkns"k fn;k x;k pwafd vkWuykbZu izfdz;k dk fnukad 02-10-2016 dk v?kksf"kr vkoaVu ifj.kke fnukad 05-11-2016 dks ?kksf"kr fd;k tk pqdk Fkk rFkk blds vuqlkj vkoafVr vH;fFkZ;ksa dh izos"k izfdz;k fnukad 07-10-2016 dks py jgh Fkh vr% bl vkWuykbZu dkmUlsfyax dh izos"k izfdz;k esa mDr vH;fFkZ;ksa dks lfEefyr fd;k tkuk laHko ugha Fkka vr% ekuuh; mPp U;k;ky; tcyiqj }kjk funsZf"kr mDr vH;fFkZ;ksa dks lka;dky 5-00 cts mijkar fjDr lgh lhVksa ds fy;s vkWQykbZu dkmUlsfyax esa Hkkx ysus gsrq muds uke ifCyD ,Msl fILVe lwpuk iVy ij iznf"kZr djrs gq, ekuuh; mPp U;k;ky; tcyiqj }kjk fnukad 07-10-2016 dks ikfjr varfje vkns"ksa dk ikyu fd;k x;kA

4- laLFkkvksa ls fjDr lhVksa dh tkudkj izkIr gksus ds i"pkr~ vkWQykbZu

dkmUlsfyaax dh izfdz;k esa Js.khokj vkoaVu dh dk;Zokgh lka;dKy 8-30 cts ls izkjaHk dh xbZA

5- dqN egkfo|ky;ksa tSls ihiYl esfMdy dkyst MsaVy vdkneh Hkksiky] HkkHkk MsaVy dkyst Hkksiky] vkj0ds0Mh0,Q0 esfMdy@MsaVy dkyst Hkksiky] fj"khjkt MsaVy dkyst Hkksiky] vjfoUnks MsaVy dkyst bankSj }kjk fjDr jgh ,u0vkj0vkbZ0 dksVk dh lhVksa dh tkudkj lka;dKy 7-30 cts ds ckn izLrqr dh xbZ ftls vkoaVu gsrq vH;fFkZ;ksa gsrq lhV pkVZ esa lEefyr fd;k x;kA

6- ekuuh; loksZPp U;k;ky; ubZ fnYyh }kjk dkmUlsfyax dh le; lhek fnukad 07-10-2016 fu/kkZfjr gksus ds dkj.k lka;dKy 8-00 cts ls Js.khokj vkoaVu dh izfdz;k xka/kh fpfdRlk egkfo|ky; Hkksiky ds ysDpj gkWy ua0 02 ,oa ysDpj gky ua0 04 esa izkjaHk dh xbZ ftlesa le; lhek esa dkmUlsfyax dh dk;Zokgh lekIr dh tkuh FkhA pwaFd ,e0ih0 vkWuykbZu jftLVMZ vH;fFkZ;ksa dh la[k;k ,oa lhVksa dh la[k;k vf/kd gksus ds dkj.k ;g izfdz;k e/;jkf= ds mijkar Hkh fujarj tkjh jghA bl izfdz;k ds varxZr Js.khokj esfjV ds vk/kkj ij fd;s vkoaVu ds mijkar futh fpfdRlk egkfo|ky;ksa esa vuqlwfr tutkfr dh yxHkx 144 lhVsa fjDr jg xbZ Fkh ,oa futh nar fpfdRlk egkfo|ky;ksa dh cgqer ls fu.kZ; fy;k x;k fd vH;fFkZ;ksa ds fgr esa fu;ekuqlkj duo"kZu jkm.M pykdj bu lhVksa dks fofHkUu JsF.k;ksa esa vkoaVu gsrq miyC/k djkbZ tkdj dkmlsfyax izfdz;k fujarj tkjh j[kh tkosaA

29. A meeting of the committee held on 17.10.2016 at 5.00 PM. The counselling committee discussed allotment of excess admissions (37 in numbers) in three private medical colleges and thereafter they have taken the following decision :-

mDr cSBd esa 03 futh fpfdRlk egkfo|ky;ksa esa 37 vfrfjDr Nk=ksa ds ,0ch0ch0,l0 lhVksa ij izos"k ds laca/k esa ppkZ dh xbZ tks fd fuEkuqlkj gS%&

1- veyrkl esfMdy dkyst nsokl& 29

2- vkj0Mh0 xkMhZ esfMdy dkyst mTtSu & 01

3- ihiYl dkyst vkWQ esfMdy lkbZUl Hkksiky& 07

ppkZ esa ;g rF; lkeus vk;s fd vkWQykbZu dkmUlsfyax ds fy;s fjDr lhVksa dh tkudkj fnukad 07-10-2016 dks lka;dKy 5-00 ctsa nh tkuh Fkh tks rnksijkUr nh xbZ tkudkj esa uksMy ,e0th0,l0 fpfdRlk egkfo|ky; bUnkSj ls =qfViw.kZ lhVksa dh tkudkj dkmUlsfyax lfefr dks nh xbZA

07 lhV ihiYl futh fpfdRlk egkfo|ky; }kjk Hkh vfrfjDr vkoaVu crk;k x;k gS bl laca/k esa gqbZ =qfV ds fy;s uksMsy xka/kh fpfdRlk egkfo|ky; }kjk gh vkWQ ykbZu dkmUlsfyax ds fy;s miyC/k lhVksa dh xyr tkudkj nh xbZ FkhA rn~uqlkj muds }kjk fjDr lhVksa dh tkudkj dkmUlsfyax lfefr dks nh xbZA

mijksDrkuqlkj nh xbZ tkudkj ds vk/kkj ij vkoaVu lfefr }kjk lhVsa vkoaVu dh xbZ bu ifjLFkfr;ksa esa ;g Li"V gS fd futh fpfdRlk egkfo|ky;ksa dks Lohd`r vf/kdre lhV ls vf/kd lhVksa dk vkoaVu Nk=ksa dks =qfVo"k gks x;k gSA bu ifjLFkfr;ksa esa Lohd`r la[k;k ls vf/kd Nk=ksa dk izos"k esfjV ds vk/kkj ij U;wure vad okys izos"kkfFkZ;ksa dk vkoaVu fujLr fd;k tkuk gS ftlesa esfjV ds fuEure vad@Js.khokj@ftu Nk=ksa dks lhVksa dk vkoaVu gqv k gks] muds izos"k fujLr

fd;s tkus dk fu.kZ; lfefr }kjk fy;k x;kA

mijksDr vfHker ds vuqlkj "kklu ds fu.kZ; ,oa funsZ"kkuqlkj lacaf/kr uksMy dkyst@vf/kdkjh }kjk dk;Zokgh dh tkos ,oa futh fpfdRlk@nar fpfdRlk jkti= izos"k fofu;e&2016 ds fu;e&13 ykxw ugha gksus ds dkj.k lacaf/kr Nk=ksa dks ewy nLrkost@fQl okilh rFkk muds Hkfo"; ds vf/kdkjksa ls oafpr u fd;s tkus dk Hkh /;ku j[kkA

lq[klkxj futh fpfdRlk egkfo|ky;] tcyiqj }kjk izosf"kr Nk=ksa dh lwph izsf"kr dh xbZ gS ftlesa dkyst }kjk 11 ,sls Nk=ksa dks "kkfey fd;k tkuk Lohd`r fd;k x;k gS ftUgsa jkT; Lrjh; dkmUlsfyax }kjk lhV vkoafVr dh xbZ FkhA mUgsa izos"k u nsdj vU; 11 Nk=ksa dks laLFkk }kjk vius Lrj ls izos"k fn;k x;k gS] lkFk gh 01 fjDr lhV ij Hkh vius Lrj ij izos"k fn;k x;k gSA ftldh iqf"V laLFkk }kjk dh xbZ gSA

jkT; Lrjh; dkmUlsfyax }kjk mijksDr 11 vkoafVr Nk=ksa dks izos"k lacaf/kr uksMy dkyst }kjk fn;k tk pqdk gSA rn~uqlkj lacaf/kr Nk=ksa dk izos"k lqfuf"pr fd;k tkos ;g vfHker fn;k x;kA

mijksDr vfHker ds vuqlkj "kklu ds fu.kZ; ,oa funsZ"kkuqlkj lacaf/kr uksMy dkyst@vf/kdkjh }kjk mijksDr Nk=ksa ds izos"k lqfuf"pr fd;s tkos ,oa laLFkk ds fo:) vko";d dk;Zokgh fd;s tkus dk vfHker Hkh fn;k x;kA"

30. As per proceeding dated 17.10.2016 on the basis of intimation given by the Nodal Agency, M.G.M. Medical College, Indore about the number of "Trutipurn" seats available in the three medical colleges and on the basis of the aforesaid fact the decision was taken by the Director of Medical Education regarding cancellation of admission of 37 excess students, but the aforesaid details are not available on the record nor Director, Medical Education (DEM) and Dean, MGM, Medical College, Indore in their affidavit brought those facts to the knowledge of this court. There is nothing on record regarding MBBS seats status, which were available with the respondents No.2 and 3 at the time of counselling dated 7.10.2016 or at the time when students were admitted in the three private medical colleges. No details have been filed along with the affidavit to prove that they were having the position of seats vacant in Amaltas Institute of Medical Science, Dewas and R.D. Gardi Medical College, Ujjain, on 7.10.2016.

31. The respondents No.2 and 3 by applying the provisions of Regulation 8 of 1997, Regulations treated the petitioners to be admitted against the increase in admission capacity to the extent of excess admission, but they without complying the Regulation 9 of Regulations of 1997, took a decision to cancel all those admissions on the pretext that due to human error they were granted admission whereas Regulation 9 clearly provides that any dispute in the matter of identification of excess admission of the student(s) in a medical institution shall be referred to the Central Government for decision.

32. In absence of details of the records on the basis of which admissions have been cancelled, it cannot be said that the petitioners were granted admissions over and above the sanctioned intake seats designated for the academic session

to the particular institution.

33. In para 31 of the affidavit dated 3.11.2016, the stand taken by the State that as per Regulations and guidelines framed by the Central Government under IMC Act, the State Government was compelled to abide with guidelines for allowing admissions as per the sanctioned intake of admission course in the academic session 2016-17 in private medical colleges, but failed to comply the Regulation No.9 of the same. This shows the working of the Director, Medical Education in granting admission and taking the matter very casually while admitting the students for MBBS course and that too against the dictum of Hon''ble the Supreme Court.

34. Hon''ble the Supreme Court time and again held that the criteria for selection has to be made on merit alone. No doubt the process of admission is a cumbersome task, but that per se cannot be a ground for cancelling the admissions of the students who were more meritorious to the students who have granted admission in the private medical college. In all fairness, the State Government has to cancel the admission to those students who are less meritorious to the petitioners. It is one of the primary obligation of the authorities to see that a candidate of higher merit is not denied seat to the appropriate course and college, as per his preference. In view of the clear guidelines issued by Hon''ble the Supreme Court, we expect that authority concerned to perform certain functions like counselling etc. in a fair and proper manner ie., strictly in consonance with the relevant Rules and Regulations. Nothing on record to say that due to some error made by a human, admissions were granted to the petitioners.

35. From the above narration, it is clear that there was no human error in granting admissions to the petitioners in private medical colleges because prior to granting admission they were having all details and records about the sanctioned intake of the private medical colleges. As per Regulations the competent authority furnished list of the students admitted during each academic year to the council and State Medical Council and the affiliating University. On the basis of those records the Director, Medical Education prepared a detailed chart about the sanctioned intake of all the private, Government and autonomous medical colleges.

36. In the present case, they have given details about present status of seats lying vacant and on the basis of the aforesaid details the admission process through offline counselling for granting admission for MBBS course was started. Those charts which were available at the time of starting of offline counselling on 7.10.2016 were not filed along with the affidavit nor they have filed any document to show as to how they came to know about the excess admission and on what basis they have arrived to the conclusion that 37 admissions in three private medical colleges were excess to the sanctioned intake. It is also an admitted fact that number of less meritorious students to the present writ petitioners were granted admissions on 7.8.2016 and no action has been taken

by the Director of the Medical Education for cancelling their admissions with a clear intent to grant admission to less meritorious candidates over and above the candidates of higher merit. The present case is a glaring example of calculated tampering with the record. The methodology adopted and the manner in which admissions were cancelled leaves no doubt that the process was neither fair nor transparent, particularly when the students are not at fault and it is the Directorate of the State Government, which were instrumental in allotting seats over and above the sanctioned strength, we are of the view that the action of the respondents in cancelling the admissions on the pretext that due to human error, petitioners have been granted admissions is liable to be quashed and accordingly, we quash the order dated 21.10.2016 and respondents are directed to take action as per law and directions issued by Hon"ble the Supreme Court on 3.10.2016 and 5.10.2016.

37. In the result, the writ petition no(s.) 7229/2016, 7253/2016, 7233/2016, 7251/2016 and 7252/2016, filed by the petitioners are allowed with cost of Rs.10,000/- to each of the writ petitioners. The cost shall be borne by the respondents.